

Preliminary Draft

Mid-Coast TMDL Stakeholder Advisory Committee Re-Convening Assessment

Assessment Report

October 2011

Prepared by:

Oregon Consensus
National Policy Consensus Center
Portland State University
720 Urban Center, 506 SW Mill St.
Portland, Oregon 97207
503.725.9070
www.orconsensus.pdx.edu

**Mid-Coast TMDL
Stakeholder Advisory Committee
Re-Convening Assessment**

Executive Summary

Mid-Coast TMDL Stakeholder Advisory Committee Re-Convening Assessment

I. Overview and Background

Oregon Consensus (OC)¹ was asked to conduct a convening assessment for the Oregon Department of Environmental Quality (DEQ) with respect to the re-convening of the Mid-Coast TMDL Stakeholder “Technical Advisory Committee” (the “Mid-Coast TAC”). The overall goal of the assessment is to develop initial process recommendations for re-convening an appropriate stakeholder advisory committee. The advisory committee would be charged with assisting DEQ in development of “implementation-ready” TMDLs for the Mid-Coast basin consistent with requirements and timeframes contemplated by litigation and settlement agreements reached regarding coastal zone management in the basin.

Oregon’s TMDL Process

Every two years, DEQ is required to assess water quality and report to EPA on the condition of Oregon's waters. DEQ prepares an integrated report that meets the requirements of the federal Clean Water Act (CWA), including Section 303(d), which requires identifying waters that do not meet water quality standards (WQS). For waters that do not meet WQS, DEQ must develop a Total Maximum Daily Load (TMDL). In the Mid-Coast basin, there are various water bodies (stream segments and lakes) listed on the 303d list for failure to meet water quality standards for various pollutants including temperature, sediment, bacteria, and algae.

A TMDL identifies the loading capacity of a water body – that is, the calculated amount of pollution (on a pollutant-by-pollutant basis) that a water body can receive and still meet Oregon water quality standards. Once the loading capacity is defined, portions of the total load are allocated to point sources (called Wasteload Allocations or WLAs) and other portions to non-point sources and natural background sources (called Load Allocations or LAs). The TMDL must also include a Margin of Safety (MOS), which may be explicitly specified as an unallocated portion of the loading capacity or implicitly specified via conservative assumptions or other methods.

TMDLs are not self implementing. Section 303(d) does not establish any specific implementation mechanism or authority beyond that which exists elsewhere in law. Consequently, point sources implement their Wasteload Allocations through water quality based discharge limitations in their state-issued National Pollutant Discharge Elimination System (NPDES) permits. Nonpoint sources implement their Load Allocations through a wide variety of State, local, Tribal, and Federal programs (which may be regulatory, non-regulatory, incentive-based or voluntary). In Oregon, DEQ has referred the initial development of implementation plans for agricultural and forestry nonpoint sources to the Designated Management Agencies (DMAs) – the Oregon Department of Agriculture and the Oregon Department of Forestry, respectively.

Prior Mid-Coast Advisory Group

¹ OC is a program of the National Policy Consensus Center in Portland State University’s Hatfield School of Government. OC is the state's program to provide neutral conflict resolution and collaborative public policy-making services to Oregon’s state agencies, local governments and the public.

As part of their TMDL development process, DEQ generally convenes an advisory or review committee of stakeholders including representatives of affected point and nonpoint sources to advise the Department in the development of a TMDL. In 2008 DEQ began development of TMDLs for the Mid-Coast Basin and during 2008 and 2009, DEQ convened a technical advisory committee (the Mid-Coast TAC) consisting of approximately 16 representatives of affected stakeholder groups from around the Mid-Coast Basin. The group met several times to work on the Mid-Coast TMDL. The technical advisory committee meetings were suspended in April 2009 when DEQ concluded that the process exceeded the Department's resource capability. Since that time DEQ has continued to develop additional data and modeling information to inform the advisory committee upon its re-convening.

Coastal Zone Litigation

In January 2009 Northwest Environmental Advocates (NWEA) filed litigation against EPA and NOAA to enforce certain provisions of the Coastal Zone Management Act (CZMA) and the Coastal Zone Act Reauthorization Amendments (CZARA). Oregon implements a coastal zone management program under CZMA. CZARA requires a state with an approved CZMA program to develop a Coastal Nonpoint Pollution Control Program (CNPCP) that is to be closely coordinated with the state's water quality standards and the state's TMDL program and to implement additional management measures as necessary to ensure water quality standards and designated uses are met. CZARA requires NOAA and EPA to withhold certain funds available to states under CZMA Section 306 and Clean Water Act (CWA) Section 319 when either agency determines that the state has failed to submit an approvable CNPCP.

Oregon submitted its first CNPCP in 1995, and NOAA and EPA approved Oregon's program in 1998 with conditions. One of the conditions required Oregon to adopt additional management measures for forestry where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the CNPCP forestry measures. Since receiving conditional approval in 1998, Oregon has worked with NOAA and EPA to address all but three of the initial 40 conditions placed on its program. Oregon still needs to satisfy the condition requiring additional management measures for forestry; however, EPA and NOAA have not withheld any funds under CZMA Section 306 or CWA Section 319.

The NWEA lawsuit challenged EPA's and NOAA's failure to withhold funds despite Oregon's failure to meet the necessary conditions for such funding. With a mission to protect and restore water quality and habitat, NWEA's stated goal was to force improvements in Oregon's efforts to meet water quality standards, especially with respect to forestry practices, through the threat of lost federal funding. (See e.g., NWEA website, press release and fact sheet.)

Oregon's Commitments under the CZARA Litigation Settlement regarding the Mid-Coast TMDL

In September 2010, the CZARA litigation parties signed a settlement agreement. In support of the settlement between NWEA and the federal agencies, DEQ committed to develop "Implementation-Ready TMDLs" which will include (1) enforceable load allocations, (2) enforceable implementation plans, and (3) "safe harbor" best management practices throughout Oregon's CNPCP management area. The approach will include assigning nonpoint source load allocations to specific landowners in contrast to the prior practice of assigning the load allocation to a nonpoint source sector generally

(e.g., forestry, agriculture, etc.) The commitment was supported by an Oregon Attorney General Opinion stating that DEQ had legal authority to enforce such a TMDL approach. DEQ further committed to implementing this approach in the coastal basins beginning with the Mid-Coast Basin TMDL. As stated in the settlement agreement, in order to meet the timelines agreed to by EPA and NOAA in the settlement, EPA has requested the State (DEQ) to submit completed Mid-Coast TMDLs by June 30, 2012.

This new approach to the Mid-Coast TMDL is a novel process that allows, for the first time nationally, enforcement of nonpoint source load allocations against individual nonpoint sources. It also relates to Oregon's forest practice rules and touches on the relationship between ODF and DEQ with respect to authority over forest practices. For these reasons, there is substantial attention to and interest in the Mid-Coast TMDL process.

II. The Assessment Process

An OC assessment is an investigation designed to identify stakeholder issues and process concerns and to assist stakeholders in organizing or convening a collaborative process. At the most basic level, the assessment phase of a collaborative process is intended to answer first the question of *whether* a collaborative process is appropriate or useful and then the question of *how* the process might best be initiated and conducted. In this case, stakeholders are an established component of the DEQ process for TMDL development generally, and a stakeholder process has already been convened on a prior occasion for the Mid-Coast basin. Thus, the focus of this assessment was on how best to re-convene the group and move the process forward in light of the new complexities of the TMDL.

OC conducted interviews with individuals most of whom were participants in the prior Mid-Coast TAC process. This initial interview list was largely based on DEQ suggestions. OC staff also had communications or conversations with several other stakeholders who contacted OC during the assessment timeframe. In addition, OC had several lengthy discussions with DEQ TMDL technical staff and managers. A list of all the individuals with whom we spoke is set forth in Attachment A, below. Interviewees were asked if they had suggestions for additional interviews and/or participants in the stakeholder process. Their suggestions are also recorded in Attachment A.

It is important to note that OC had limited resources with which to undertake this assessment. The budget allowed only for about 12 interviews, although OC staff had considerably more conversations including multiple discussions with some stakeholders and discussions with individuals not initially on the list of suggested interviewees. There would be value in some additional assessment work to interview some of the suggested contacts or others in order to improve the understanding stakeholder interests and refine the approach to be taken in this novel TMDL process.

The sections below highlight some of the key issues and concerns gleaned from the stakeholder interviews along with our analysis and recommendations for how to address those issues and structure the process.

III. Stakeholder Interests and Concerns

OC staff conducted formal interviews with 12 stakeholders representing private timber, local

government, tribal, state and federal agencies, and conservation organizations (including the plaintiff in the CZARA litigation). Interviewees were highly interested in the Mid-Coast TMDL and, to a person, said they would be willing participate if the TAC was reconvened. The interviewees provided valuable information and OC staff is grateful to each interviewee for their time and effort. The following are highlights of some of the key issues and concerns gleaned from the stakeholder interviews.

Group Purpose, Goals and Process:

Many interviewed stakeholders were very clear about their concern that when the process is resumed it be done in a well thought out and organized manner. Some of their specific concerns and suggestions included the following:

- *Clear Articulation of Goals and Roles.* Many interviewees expressed a strong interest in having a clear articulation of the advisory committee's purpose and goals – i.e., the legal sideboards and expectations about their role in and relevance to the TMDL development process.
- *Clear Explanation of Process.* One suggestion was to have DEQ begin the reconvened TAC process with an overview of the IR-TMDL process and an explanation of how it will differ from a standard TMDL.
- *Operating Principles.* A number of interviewees suggested that the group develop guiding/operating principles that clearly articulate representative and group roles and responsibilities as well as rules governing participation and group process.
- *Preparation.* Many stakeholders expressed the strong desire that DEQ be well prepared and ready to proceed before re-convening the group – in terms of both having the necessary data to proceed and being well prepared to orient the group and present information in a productive way.

Balancing Roles for Local and Distant Interests

Involvement from outside parties was of concern to many interviewees some of whom expressed a strong interest in having primarily (or exclusively) local representation on the advisory committee while others suggested that this novel TMDL development process was relevant and of significant interest to other, non-local stakeholders and that the process would benefit from their participation.

- *Local Control.* Many individuals (particularly some former TAC members) felt that local representation was important in developing a Mid-Coast specific TMDL, which was viewed a priority goal. The development of a uniquely Mid-Coast TMDL was seen as crucial to gaining local support and achieving the desired environmental effect.
 - Some of these stakeholders were concerned about the involvement of “outside” parties, including federal agencies.
 - Some were concerned about being “forced” to use approaches used elsewhere but were not appropriate here.
- *Outside Interests.* Some of the individuals we heard from were, on the other hand, very interested in describing a role for non-local stakeholders with significant interest in the novel IR-TMDL process. These stakeholders expressed a variety of interests including interests in:
 - How the new process would work to make nonpoint source pollution controls more enforceable.
 - More particularly in how the process would address their interests in improving water quality protection on private forestlands.
 - How the process will influence or serve as a model for other TMDLs in which they had

a significant interest or role (i.e., the precedential role of this as the first IR-TMDL). Some stakeholders also expressed interest in part because they had been involved in some of the earliest discussions about the concept of prescriptive (or implementation-ready) TMDLs.

Technical Information and Analysis

Many stakeholders expressed interest, concern and opinion about the data and analyses that form the basis of the TMDLs. Some of those concerns included the following:

- A number of interviewees expressed concern regarding whether sufficient and appropriate technical information would be available to initiate the TMDL development and advisory committee process.
 - Of particular concern was the available information and an agreed upon approach for addressing sediment – some suggested that the spatial scale of the prior analytical effort was inappropriate (too large).
 - Another concern was raised about the adequacy of the data for the HeatSource model and whether one of the stream segments selected for temperature modeling (during the prior TAC process) was adequately representative.
- Interviewees suggested that the TAC should not be reconvened until DEQ had sufficient technical information to proceed.
- Once the process has been initiated some interviewees wanted DEQ to provide a high level overview or “primer meeting” for each technical topic prior to initiating, detailed discussions on the topic.
- Some stakeholders felt that very technical discussions of the modeling and analyses were best had with a smaller group of individuals with sufficient knowledge and expertise to have a meaningful discussion of the technical details.
 - This paralleled the interest of other stakeholders to not be involved in technical discussions on topics in which they were not particularly interested.
 - Some stakeholders also suggested bringing in outside experts (government, academic, private, non-profit, etc.) to participate in technical discussions.
- Some stakeholders pointed out the availability of LIDAR data to help with both temperature and sediment modeling.
- Some institutional stakeholders spoke of data they had to offer for DEQ to use in their analyses.
- Several stakeholders pointed out the need to factor climate change into the analysis.
- Other stakeholders observed that there were likely to be other listings and pollutants coming in the next 303d list (e.g., pesticide/toxics related parameters) and they would like to see those addressed.
- Some stakeholders were interested in the relationship between sediment and suspended solids/turbidity and the relevance to municipalities that might rely on surface sources of drinking water.

Process Suggestions and Preferences

- Stakeholders offered a number of suggestions regarding how to structure the process and facilitate their participation. Some of those suggestions are highlighted below in Section V and many are imbedded in our process recommendations.

IV. Analysis

The Mid-Coast TMDL process presents a number of challenges, some of which may be considered fairly typical for a TMDL development process and others of which are more unusual. The challenges typical for a TMDL development process include:

- *Technical Analysis (in general)*. Developing an acceptably accurate measure of pollutant loadings and allocating those loads across point, nonpoint and natural background sources.
 - *Sediment Analysis*. For sediment in particular, assessing sediment loadings in systems that are naturally variable and have a potentially substantial and fluctuating natural background loading.
 - *Sediment Standard*. Interpreting a non-explicit narrative water quality standard for sediment.
- *Data (in general)*. Obtaining sufficient data to develop models and identify appropriate loading allocations for all relevant pollutants in all listed waterway segments.
- *Complex Process*. Managing a process to engage stakeholders with diverse and sometimes conflicting interests in a complex analysis involving multiple parameters, lots of data, highly technical analyses and models, and scientific uncertainty.
- *Staff and Resources*. Maintaining sufficient staff and resources to develop TMDLs in a timely manner.

This is not to say that these challenges are not significant, but rather that they are the sort of technical and resource challenges that DEQ and other participants are likely to face in any TMDL development process – challenges in which they have some experience.

The more unusual or novel challenges presented by the Mid-Coast TMDL will require more careful analysis and more complex approaches to address. We have identified three significant factors, unique to this TMDL process, that will require attention in the design and implementation of any stakeholder advisory process:

- *Timing*. Under the settlement agreement in the CZARA litigation, DEQ is subject to severe time constraints to develop the Mid-Coast TMDL. This presents a substantial challenge for *all* listed pollutant impairments and segments. It is a significant *problem* with respect to sediment.
- *Forest Practices Act*. The CZARA litigation that is spurring the current effort to develop the Implementation Ready Mid-Coast TMDLs is part of a larger, long-term effort by the conservation community to bring about changes in Oregon's Forest Practices Act. The CZARA litigants and other conservation stakeholders have a strong interest in the outcomes here and will be closely scrutinizing whether the IR-TMDLs are implemented in a manner that meets their interests and is consistent with the negotiated settlement.
- *"Implementation-Ready" Approach*. DEQ has agreed to the use of a novel "implementation-ready" approach to TMDLs for the Mid-Coast watersheds. The new approach requires DEQ to develop more detailed source delineations, allocations, and articulated and enforceable implementation measures. This will be the first time such an approach has been used in Oregon or nationally, and it will draw the attention of other parties from outside the Mid-Coast and even, perhaps, from outside Oregon who have an interest in how this novel

approach is implemented.

Each of these three factors has significant implications regarding the role and decision space for stakeholders and/or for how a stakeholder engagement process might be structured. These three factors are discussed in more detail below.

Timing

As a result of commitments made in the CZARA litigation, DEQ is subject to severe time constraints to develop the Mid-Coast TMDL. As stated in the settlement agreement, in order to meet the timelines agreed to by EPA and NOAA in the settlement, EPA has requested the State (DEQ) to submit completed Mid-Coast TMDLs by June 30, 2012. This presents a substantial challenge for timely completion of TMDLs for *all* listed pollutants/impairments and stream segments. DEQ and stakeholders will have to work very expeditiously to complete even a portion of the TMDLs for the relevant parameters/stream segments, and will likely have to prioritize and focus effort on those most relevant to the interests of the litigants.

In particular, the time constraints present a substantial *problem* with respect to completing the sediment TMDLs in a timely manner due to the long timeline needed for completing the technical approach (data gathering, modeling, literature review, etc.) as well as for clarifying the underlying narrative water quality standard and/or developing numerical standards. From the interviews it appears nobody disagrees that there simply is insufficient time for DEQ to complete the necessary technical work to develop a source delineation, load allocations, and implementation components of a sediment TMDL in the relevant timeframe. There are several possible outcomes/solutions including:

- *Non-Completion.* DEQ fails to complete the required TMDLs and EPA and NOAA are forced to disapprove the CNPCP and therefore withhold CWA Section 319 and CZMA Section 306 funding
- *Adjust Timeline.* DEQ negotiates a different timeline/deadline for submitting sediment TMDLs with the litigants and the settlement agreement is modified accordingly
- *Adjust Outcome.* DEQ employs an alternative/streamlined approach to addressing sedimentation that allows completion of at least some components of a TMDL or an equivalent outcome within the current timeframes (such an approach would likely have to meet the approval of the litigants and might require modification of the settlement agreement). This approach might include one, or some combination, of the following:
 - A Section 4(b) alternative to a TMDL (i.e., adoption of alternative pollution control approaches that ensure that designated uses/water quality standards are being met)
 - Such an approach would still accommodate stakeholder involvement in developing the alternative pollution control approaches
 - Adoption of numeric standards for sediment based on standards used in other similar coastal rivers/streams and previously approved by EPA
 - This could be done as an interim solution to meet the requirements of the CZARA litigation while a traditional effort to develop a sediment TMDL proceeds on an appropriate timeline.
 - Such an approach will limit or eliminate stakeholder involvement in setting the interim standards, but may allow stakeholder involvement in determining

allocations and TMDL implementation approaches and in development of the long-term standards

The different approaches above have differing implications for stakeholder roles and involvement. DEQ will need to determine how to resolve the legal dilemma created by the conflicting timelines for compliance with the settlement agreement and a traditional approach to developing the sediment TMDLs. It would be best for DEQ to do this in advance of resuming the stakeholder process in order to avoid confusion and to be clear about stakeholder roles, goals and timelines.

Oregon Forest Practices Act

The CZARA litigation that is spurring the use of the “implementation-ready” approach for these TMDLs is part of an ongoing and longstanding effort by the conservation community to bring about changes in Oregon’s Forest Practices Act. Oregon’s Forest Practices Act and the rules promulgated thereunder have long been the subject of concern and criticism by some stakeholders and agencies for inadequately protecting streams and water quality and the fish (particularly salmonids) that depend on those streams, especially with respect to forestry practices on private lands. EPA has repeatedly stated that Oregon’s current forest practice rules are inadequate to achieve and maintain water quality standards and designated uses. Given these broader implications, the plaintiff in the CZARA lawsuit, as well as other conservation stakeholders, have a strong interest in the outcomes here and will be closely scrutinizing whether the IR-TMDLs are implemented in a manner that meets their interests and is consistent with the negotiated settlement.

The development of TMDL implementation plans for sediment, temperature, and perhaps other pollutants will require that DEQ engage with the Oregon Department of Forestry. ODF and DEQ will either have to fashion locally specific implementation plans that address specific geographies or develop more systemic or regional approaches. Whatever the measures are, ODF and DEQ will have to decide whether to design and implement them at the watershed level, the regional level (e.g. the Mid-Coast or larger region), or statewide. Developing watershed-by-watershed approaches for TMDL compliance would be a labor- and resource-intensive approach for ODF, so it may be advantageous to develop a more systemic approach to implementing TMDLs in a way that will meet EPA approval.

Although they are not necessarily traditional stakeholders in the TMDL development process, it will be important for there to be appropriate and transparent mechanisms to allow the CZARA plaintiffs and other similarly interested stakeholders to observe and, at times, engage in discussions about how the TMDLs are implemented in relation to the Forest practices Act and implementing rules. Failure to do so would risk an outcome that would not satisfy the litigants and could result in wasted effort and a loss of CWA section 319 and CZMA section 306 funding or additional litigation.

Implementation Ready Approach

DEQ has agreed to the use of a novel “implementation-ready” approach to TMDLs on the Mid-Coast. The new approach will require DEQ to develop more detailed source delineations, more specific and enforceable Load Allocations for nonpoint sources, as well as enforceable implementation plans, and “safe harbor” best management practices. This will be the first time such an approach has been used in Oregon or nationally, and DEQ has indicated it will use this approach elsewhere on the coast in the future (as required in the CZARA settlement agreement). The

approach could eventually be used for TMDL development elsewhere in the state or in other states to address challenging nonpoint source pollution problems.

Because this is a new approach requiring the development of additional TMDL components not previously prepared by DEQ, it will require greater effort, resources and time. Because it is a novel approach with the potential to provide enforceable mechanisms to address nonpoint pollution problems, it is likely to draw the attention of other parties from outside the Mid-Coast region and even from outside Oregon who have a strong interest in how this novel approach is implemented.

While the actual development of Mid-Coast watershed source delineations, allocations, and implementation mechanisms remains an inherently local issue, others from outside the region have a valid interest in being kept apprised about how this novel approach evolves. In addition to conservation or environmental interests (including perhaps regional or national organizations interested in addressing water quality and nonpoint source pollution), interested parties may include representatives of nonpoint sources of various sorts (e.g., agricultural, forestry, and development interests) as well as point sources (e.g., municipal, industrial, or other point sources) who may be involved in IR-TMDL processes in the future. Such stakeholders may be interested in assuring that this first IR-TMDL process does not create problematic precedent for future TMDLs.

In some cases there may also be value in having such “outside” interests offer their perspectives to the teams working on the Mid-Coast TMDL. Soliciting comments or input from such outside perspectives may provide helpful insights or out-of-the-box thinking. DEQ and other parties may have an interest in identifying solutions that work in a broad variety of circumstances or that at least do not set a problematic precedent for future implementation-ready TMDLs.

V. Process Recommendations

Based on the information available and the interviews and conversations we have been able to conduct to date, OC can make several recommendations regarding the re-convening of a stakeholder advisory process. There are some suggested organizational options outlined below, but there are several key concepts or principles that should be stated at the outset:

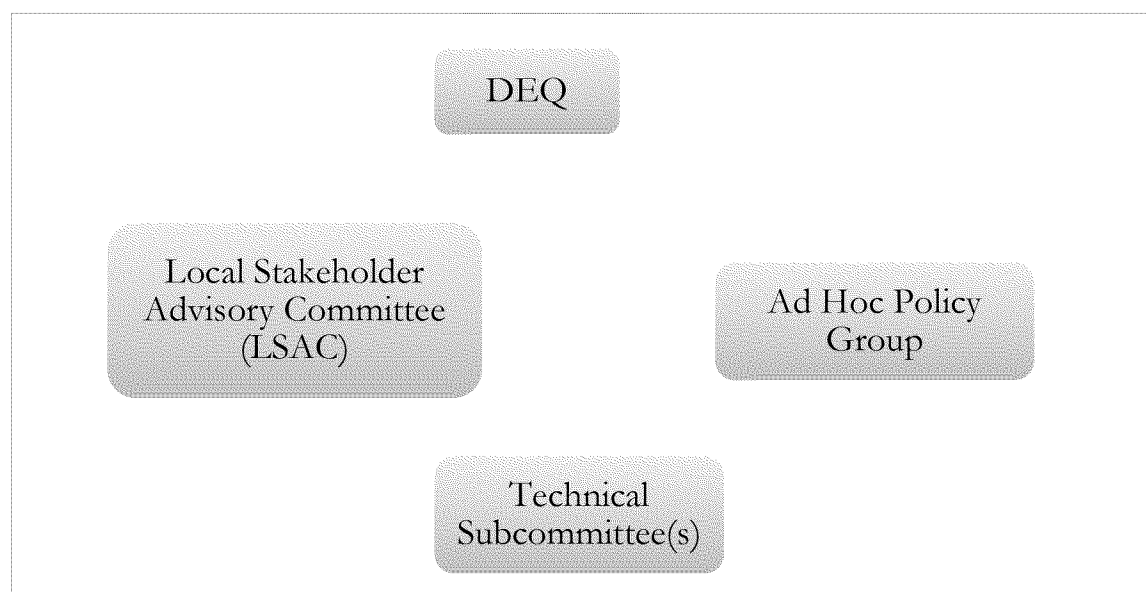
- DEQ should not reconvene stakeholders until they are fully prepared to proceed with the preliminary elements of the TMDL stakeholder process and have adequate data available to begin meaningful work. DEQ should be prepared to fully brief the group on its tasks and the current status of data gathering and technical work at the first meeting.
- DEQ should be completely clear with all relevant stakeholders at the outset about the role of the stakeholder advisory group, its decision space, and why DEQ is structuring stakeholder participation in this way.
 - In particular, DEQ should be clear and transparent about the role of the CZARA litigation and associated deadlines in shaping the way the process is unfolding
- The process as a whole must be well organized, transparent, and governed by an agreed upon set of ground rules or operating principles that the group develops for itself with the assistance of a third-party neutral.
 - The operating principles should address goals and objectives, group membership and participation, communication protocols, decision making, and other process components.

- A third-party neutral will be an instrumental tool to help the group and the process to function efficiently and effectively.

It has become clear from conversations with DEQ and the stakeholders that the shape of a reconvened stakeholder advisory group will need to be somewhat different from the prior effort. There is now a need to address multiple levels of interest in the Mid-Cost TMDL development process ranging from (1) the traditional interests of local stakeholders in advising DEQ on source assessments, allocations and implementation to (2) highly technical discussions related to sediment or other pollutant loadings, to (3) more general, strategic or policy focused engagement related to the novel nature of this new “implementation-ready” approach and the political context in which it has arisen. While the process can and should respect the special role of the local stakeholders in shaping solutions for their watersheds and communities, it should also recognize and find a way to transparently include other relevant voices and perspectives in the overall dialogue.

Overall Structure and Participation

One possible structure for this multi-level stakeholder engagement process that addresses this need for multifold engagement might look like the following:



In this scenario, the core group is the “Local Stakeholder Advisory Committee” (LSAC), which is a committee of primarily local representative stakeholders, not dissimilar from the “TAC” that was previously convened. This would be the larger group of local stakeholders that would be the primary group to consult with DEQ and provide input on all aspects of the TMDL development process. The committee’s meetings and agendas would be open to the public to observe, although active participation would generally be limited to the members of the LSAC group.

The Technical Subcommittee(s) would be a subset of the larger LSAC composed primarily of those individuals that have the technical capacity to engage in detailed discussions of data analysis, modeling, or other topics as appropriate. The point here is to allow smaller scale discussions of highly technical issues among those most informed on the topic. This group would report out,

however, to the larger LSAC on its deliberations and conclusions. It is expected that the composition of this group would change depending on the topic being discussed (see below), and that LSAC stakeholder organizations may bring in additional or different individuals from their organizations that are not normally engaged in the LSAC process because of their special expertise. The group might also choose to bring in “outside” parties with particular expertise on an issue as needed.

Finally, the Ad Hoc Policy Group would be a group of typically non-local stakeholders that have, nevertheless, reasonable interests in the Mid-Coast TMDL process or outcomes. This might include the CZARA litigants, similarly interested regional or national conservation organizations, associations of point or nonpoint source industries or related agencies (e.g., associations of municipalities, water providers, or water treatment facilities). While these entities would not be active participants in the local stakeholder advisory process, they would be encouraged to attend LSAC meetings as observers and they could also be provided with their own opportunities to interact with DEQ and the LSAC either in the context of their own meeting or through structured component of the LSAC meeting process.

State, Federal and Tribal agencies would likely be engaged at several levels. It is expected that DEQ would be engaged as an active participant in all three groups and provide technical support as needed to the LSAC and Technical Subcommittee in particular. Other state agencies may be engaged in the process as needed. DOA and ODF would be expected to participate in the LSAC because of their direct role in developing plans for implementing the TMDLs. The federal agencies, EPA and NOAA in particular, certainly will have an interest in the outcomes of the process, and LSAC members may recognize the value in having the federal perspective at the table as a resource for them (in LSAC or Technical Subcommittee meetings), given the role those agencies will play in later approval of TMDLs and the CNPCP.

As with any process involving institutional and/or governmental participants, it will be very important to have the right representatives participating in the process. Ideal representative participants will both technically capable and policy aware, and they will be empowered with or have good access to decision-making authority. In addition, they should be experienced and skilled at working in a collaborative context.

Managing Discussion Topics (Pollutants and Geographies)

It was clear from the stakeholder interviews that LSAC participants wanted the topics, agendas and discussions of the LSAC to be well structured and managed so that members could participate on an as needed basis and not waste time attending meetings that focused on subject matter that was not of interest to them. Although there was some difference of opinion, most stakeholders felt that LSAC deliberations should be organized initially by pollutant (i.e., temperature, bacteria, sediment, etc.) because the technical discussion about source delineations, allocations and implementation measures would at least initially be pollutant specific and cut across geographies. Once that preliminary work is complete, it may make sense to organize some regionally specific discussions to make adjustments in assumptions or approaches based on local/regional differences. (For some constituencies lower down in the watersheds, like agriculture, the geographic organization may at times be more relevant.) Finally, when deliberations are focused on implementation measures in particular, the focus may be on discussions among the separate source categories (forestry, agriculture etc.).

Challenges to sequencing the parameters include the interrelatedness of parameters – particularly the temperature and sediment parameters. It is possible that there may be an opportunity to move some discussions forward nearly simultaneously, but there are some stakeholders/individuals that may need to be involved in discussions on several or all pollutants or geographies, so scheduling efforts would need to be informed and reasonable for such stakeholders. DEQ may also have challenges staffing simultaneous or even near-simultaneous discussions on multiple parameters. (One way to manage this on the logistical end might be to schedule full day meetings where the morning is devoted to one topic and the afternoon to another, but this does not address the larger resource issue for DEQ of supporting multiple analyses at the same time.)

Exactly how to organize the discussion will be an evolving solution as the process moves forward, but the message was clear that however the discussion is organized, it will be very important to develop a clear plan and schedule for deliberations so that stakeholders can plan their attendance and involvement accordingly. A first step to take (with the group once it is convened) would be to develop a comprehensive issues-to-be-resolved list for each pollutant and each geography – a roadmap (process tool) describing how the group will move through the issues and providing assurance to the participants that everyone's important issues will be addressed in time.

Stakeholder Participation and Process Preferences

Interviewees had many helpful suggestions on the details of how the reconvened TAC process should be conducted. Below are a few that bear attention and are not already addressed elsewhere (*OC comments/suggestions are in italics*):

- With regard to meeting schedule, most interviewees said they would be willing to participate in meetings once a month. Some preferred half-day meetings, and some were comfortable with whole-day meetings. (*If meetings are to be full days, it will be very important to keep meetings from bogging down by having clear and thoughtful agendas and keeping to them.*)
- Those with technical expertise were generally willing to participate in additional technical meetings, as needed.
- Daytime meetings were preferred generally.
- Stakeholders did ask scheduling to be considerate of travel time.
- Some suggested providing alternative ways to participate in meetings remotely (video conference, WebEx, etc.).
- A number of interviewees suggested that DEQ work to provide on-line access to meeting and technical information.

Stakeholder Reflections on the Prior Process

Interviewees were asked for their thoughts about lessons learned from the prior Mid-Coast TAC process. Stakeholders were appreciative of some aspects of the last process and less enthusiastic about others. These are worth bearing in mind as the group is reconvened (*OC comments/suggestions in italics*):

Good Stuff:

- Process structured around technical groups and issues.

- Lots of good information to consider and generated by the group as well.
- Group members that participated in a constructive way – there were no “saboteurs.”

Things to Improve:

- Technical meetings bogged down by too many participants including some without sufficient technical proficiency to effectively participate (*addressed in OC's recommendations*).
- One, or a few, sticky issues that derailed the whole process (*part of the job of a neutral facilitator to manage/prevent this*).
- Shortcuts on technical issues/analysis and a consequent loss of credibility (*be transparent up front about resource and time constraints – work with group to identify solutions*).
- Consultants that appeared to be not neutral on outcomes (*one solution – allow stakeholders a role in reviewing or selecting consultant candidates*).
- Some folks that never fully understood role/objective of group (*addressed in recommendations*).
- DEQ team sometimes not well prepared to communicate the issues (*addressed in recommendations*).
- Participants need to represent their broader constituencies, not just themselves as individuals (*an important issue – best addressed at the initial convening and through the development of operating principles, as recommended*).

V. Conclusion

Reconvening a stakeholder engagement process for the Mid-Coast TMDL will be a complex and challenging task. This TMDL process will be unique in both approach and outcomes. Consequently the stakeholder engagement effort will be necessarily different and should be distinguished from the prior TAC process. It will benefit from careful preparation, organization, transparency, constructive stakeholder engagement and the support of a third-party neutral facilitator. As with all complex processes, it will change and evolve as it moves forward, but it will draw strength from a firm and thoughtful initial convening.

**Mid-Coast TMDL
Stakeholder Advisory Committee Re-Convening Assessment Report**

**Attachment 1
List of Interviewees and Other Contacts**

OC interviewed or otherwise obtained input from the following individuals in preparing this report:

- Nina Bell, Northwest Environmental Advocates
- Peter Daugherty and Marganne Allen, Oregon Department of Forestry
- Adam Denlinger, City of Toledo Public Works
- Paul Engelmeyer, Peak Environmental/Audubon Society
- Barbara Ellis-Sugai, United States Forest Service
- Janet Gillaspie, Oregon Association of Clean Water Agencies (ACWA)
- Stephen Hagar, Siuslaw Watershed Council
- Greg Harlow, Siletz Watershed Council
- Wayne Hoffman, Mid-Coast Watershed Council
- Chris Jarmer, Oregon Forest Industries Council
- Jeff Light, Plum Creek Timber Company
- Mary Scurlock, Pacific Rivers Council
- Stan van de Wetering, Confederated Tribes of Siletz Indians
- David Waltz, Ryan Michie, and Gene Foster, Oregon Department of Environmental Quality
- David Wilkinson and Kevin Fenn, Oregon Department of Agriculture

During the course of interviews and discussions, stakeholders recommended contacting the following additional parties for information and/or possible participation in the process:

- George Ice – National Council for Air and Stream Improvement
- Molly Carey – Oregon Department of Transportation
- Small land owners
- Jim Buiseman – Lincoln County
- Jim Chambers – Lincoln county public works
- Lee Richman – Newport public works
- Tom Picciano - Georgia Pacific
- Scott Dixon (?) - Seal Rock Water District
- City of Waldport/Yachats
- Additional members of DOA's Local Advisory Committees
- Jennifer Beathe – Starker Forests
- Stacy Polkowski – Lincoln Soil and Water Conservation District
- Paul Robertson – regarding lakes
- Marc Lieberman – National Oceanic and Atmospheric Administration
- ODFW – Bob Buckman, District Biologist
- Steve Steiner, BLM
- Alsea Watershed Council – Andy Kittel

**Mid-Coast TMDL
Stakeholder Advisory Committee Re-Convening Assessment Report**

**Attachment 2
Draft Assessment Interview Protocol**

Background

Oregon Consensus (OC) is Oregon's official program for public policy consensus building. OC provides consensus building, facilitation, mediation and other conflict resolution services to public entities and their stakeholders on complex environmental and public policy issues. OC is a program of the National Policy Consensus Center in Portland State University's Hatfield School of Government. OC's mission is to promote effective and efficient approaches for collaborative governance on public policy issues affecting Oregon and its citizens. OC offers federal and state agencies, local government, and the public a neutral forum and neutral services.

Oregon Consensus (OC) has been hired to conduct a convening assessment for the Oregon Department of Environmental Quality (DEQ) with respect to the re-convening of the Mid-Coast TMDL Technical Advisory Committee (Mid-Coast TAC). The overall goal of the assessment is to develop an initial process design for re-convening the TAC. The TAC would be charged with assisting DEQ in development of "implementation-ready" TMDLs for the Mid-Coast basin consistent with requirements and timeframes contemplated by litigation and settlement agreements reached regarding coastal zone management in the basin. The questions OC will be asking during the convening interviews are included below for your consideration.

Convening Interview Questions

1. Please tell us about your background, your involvement and interest with respect to the Mid-Coast TMDL process?
2. What do you perceive as the major issues that need to be addressed through the Mid-Coast TMDL process?
3. What are the challenges or barriers to addressing these issues? Do you have any suggestions for how they might be overcome?
4. What approach or process would be most useful in addressing the above topics and why? What would *not* be a useful or acceptable approach and why? For example:
 - Should the TAC be organized geographically? If so, how?
 - Siuslaw (& Siltcoos), Alsea & Yachats, Siletz-Yaquina
 - Should the TAC be organized by pollutant/impairment type? If so, how?
 - temperature, bacteria, dissolved oxygen & nutrients, sedimentation, weeds/algae-lakes
 - Should the TAC be organized by land use/management/industry sector? If so, how?
 - Agriculture, Forestry, Urban, Commercial, rural residential, other
5. Are there lessons learned (positive or negative) from the past Mid-Coast TAC effort that should be

- applied to this process?
6. Do you think there are information/data gaps and if so, what are the sources of data and resources you think should be utilized and considered?
 7. Are **you** willing to participate in this process (which is likely to be fairly intensive)?
 - Will you/your organization continue as TAC participant
 - Availability for working in subgroups (geographic or issue based)
 - What amount of time can you commit (between now and November 2013)?
 - Can your organization provide funding to support process assistance?
 - Meeting schedule preference
 - Monthly, bimonthly, quarterly?
 - Half day, all day?
 - AM or PM or Evening?
 - Geographic-specific interest (sub-basin):
 - Siuslaw (& Siltcoos), Alsea & Yachats, Siletz-Yaquina
 - Impairment-specific interest
 - temperature, bacteria, dissolved oxygen & nutrients, sedimentation, weeds/algae-lakes
 - Land use/management-specific
 - Agriculture, Forestry, Urban, Commercial, rural residential, other
 8. Is there anyone else you think we should be interviewing and why?
 9. Do you have any questions for us?
-